INTERIOR BOARD OF INDIAN APPEALS

David C. Carruth Family Trust v. Acting Muskogee Area Director,
Bureau of Indian Affairs

35 IBIA 9 (04/06/2000)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

DAVID C. CARRUTH FAMILY TRUST, Appellant	:	Order Affirming Decision
v.	:	
	:	Docket No. IBIA 99-82-A
ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	April 6, 2000

Appellant David C. Carruth Family Trust seeks review of a June 24, 1999, letter from the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), notifying Appellant that Oil and Gas Lease No. 602-1215 (64878), Seminole Nation (lease), expired by its own terms for failure to produce in paying quantities. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The lease, which was entered into on December 1, 1952, covers the S½ NW¼, E½ SW¼, NW¼ NW¼ SW¼, E½ NW¼ SW¼, E½ NW¼ SW¼ and SW¼ SW¼ of sec. 5 and the N½ NE¼ SE¼ and the SE¼ SE¼ of sec. 6, T. 8 N., R. 6 E., Seminole County, Oklahoma. The term of the lease was "three years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land." The lease was approved by the Chief, BIA Branch of Land, on May 8, 1953. It was assigned to David C. Carruth (Carruth) in April 1974. Carruth died in August 1997. Appellant states that it inherited the lease.

In his June 24, 1999, letter, the Area Director stated that the last reported production from the lease was in April 1998.

Nothing in the filings of the parties or the administrative record identifies the regulations that govern this lease. Oil and gas leases involving lands owned by members of the Five Civilized Tribes are addressed in 25 C.F.R. Part 213. Because this is a lease of tribally, rather than individually, owned lands, Part 213 does not appear to apply. Instead, it appears that this lease is governed by 25 C.F.R. Part 211, "Leasing of Tribal Lands for Mineral Development."

Prior to July 1996, the same analysis would have been applied to the issue here under either Part 211 or Part 213. However, in July 1996, Part 211 was amended to include a provision authorizing suspension of operations. See Billco Energy v. Acting Albuquerque Area

Director, 35 IBIA 1 (2000). Part 213 was not amended. Therefore, the analysis now differs according to which of the two parts applies. 1/ In the absence of a statement from the Area Director as to the controlling regulations and, out of an abundance of caution, the Board addresses the Area Director's decision under both Parts 211 and 213.

The Board first examines the decision under 25 C.F.R. Part 213. Part 213 does not contain any regulation relating to the suspension of operations. Therefore, the Board follows its prior case law and considers whether Appellant has stated and proven sufficient reason for the suspension of operations. See, e.g., Citation Oilfield Supply & Leasing, Ltd. v. Acting Billings Area Director (Citation II), 27 IBIA 210 (1995); Citation Oilfield Supply & Leasing, Ltd. v. Acting Billings Area Director (Citation I), 23 IBIA 163 (1993); Duncan Oil, Inc. v. Acting Navajo Area Director, 20 IBIA 131 (1991).

Appellant filed a statement with the Board which reads:

> [Appellant] will not file an opening brief, nor does it assert that the Muskogee Area Director made an error in the decision being appealed. The basis of the appeal is extenuating circumstances as stated in the original notice of appeal.

In its notice of appeal, Appellant presents several reasons why it believes its failure to produce should be excused. It first states that Carruth's "heirs and trustee have very little knowledge of the lease" and that, "[i]n fact, they have not seen a written copy of the lease."

Paragraph 12 of the lease provides: "It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereto shall inure to, the heirs, executors, administrators, successors of, and assigns of the respective parties hereto." Appellant seeks the benefits of the lease; it must also bear the obligations. One of those obligations was to familiarize itself with the lease and with all applicable Federal laws. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Billco, 35 IBIA at 7, and cases cited therein. The fact that Appellant has not read the lease does not excuse its failure to abide by the lease's terms.

Appellant states that it paid $362.50 in December 1998 for underpaid rent on the lease, and that it "assumed that this payment maintained [Appellant's] interest in the lease." Notice of Appeal at 1.

1/ Of the oil and gas lease expiration cases involving the Five Civilized Tribes which the Board has decided since July 1996, tribally owned land was at issue in only one case. In Bluestem Oil and Gas, Inc. v. Acting Muskogee Area Director, 34 IBIA 147 (1999), the Area Director concurred in a remand of a case involving lands owned by the Thlopthlocco Tribal Town. The Board did not discuss which regulations applied.

Paragraph 3(c) of the lease deals with rentals and royalties. Nothing in that paragraph, or elsewhere in the lease, provides that the payment of rent will continue a lease which is in its extended term but which is not produced.

Appellant argues that the economic viability of the lease is questionable. It states that the decision to cease production was based on a combination of low oil prices and the need to make mechanical upgrades on the well that had been producing.

The Board has not previously found a cessation of production from an Indian lease to be justified on the basis of economic conditions. See, e.g., Oxley Petroleum v. Acting Muskogee Area Director, 29 IBIA 169 (1996). The Board concludes that it is not necessary to determine here whether economic conditions could ever justify cessation of production because Appellant has not even attempted to present an economic justification for cessation.

The Board has held that breakdowns of a producing well may justify a temporary shut-in if there is evidence that production was resumed within a reasonable time. See Citation I; Citation II. However, Appellant has not shown the nature of any mechanical problems with the producing well, and did not resume production. The Board concludes that this argument does not justify the cessation of production.

Appellant contends that it paid for an SPCC plan which was required by the Environmental Protection Agency and for a mechanical integrity test on the salt water disposal well which was required by the Oklahoma Corporation Commission. It further asserts that it was in the process of hiring a petroleum engineer to assess the viability of putting the well back on line when it began receiving communications from the Department concerning the lack of production. It asks for additional time to continue to assess the viability of the lease.

The Board finds nothing in these statements that justifies the prior failure to produce the lease.

Therefore, if this lease is governed by 25 C.F.R. Part 213, the Board affirms the Area Director's decision.

If this lease is governed by 25 C.F.R. Part 211, the Area Director's decision must also be affirmed. In Billco, supra, the Board discussed 25 C.F.R. § 211.44, which was added to Part 211 in July 1996, and which addresses the suspension of operations under a lease in its extended term. Subsection 211.44(a) concerns suspensions for "remedial purposes which are necessary for continued production, to protect the resource, the environment, or for other good reasons;" while subsection 211.44(b) discusses the suspension of operations for economic or marketing reasons. The Board held in Billco:

> Because the regulations in Parts 211 and 212 [2/] now provide for suspensions of operations, those regulations control as to when a lessee may temporarily cease production on a lease in its extended term without subjecting the lease to expiration. * * * [T]he determination as to whether a shut-in is justified will henceforth be made at the time approval of a suspension is granted or denied. The determination as to whether a lease has expired, in the case of a shut-in, can be based upon whether or not approval was given to a suspension of operations. Thus, in appeals from lease expiration decisions concerning leases issued under Parts 211 and 212, there should no longer be a need to resort to a Citation-type analysis.

35 IBIA at 7.

As in Billco, the suspension of operations here occurred after the effective date of section 211.44. Appellant has made no assertion that it applied for and was granted permission to suspend operations. Therefore, Appellant's suspension of operations was not authorized, and the lease expired when production ceased in May 1998.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the June 24, 1999, decision of the Muskogee Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ Part 212 governs the leasing of allotted lands for mineral development.